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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**

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8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 v.

11 ALFREDO CARRANZA, JR.,

12 Defendant.

2:11-cr-00012-LDG-RJJ

AMENDED
REPORT & RECOMMENDATION OF
UNITED STATES MAGISTRATE
JUDGE

13 Defendant's Motion to Suppress for Fourth
14 Amendment Violation (#11)

15 This matter came before the Court for reconsideration of the previous Report and
16 Recommendation (#36) following remand by the district judge. Order (#54). The court has
17 reviewed all pleadings related to Defendant's Motion to Suppress (#11), as well as the testimony
18 and evidence presented at the evidentiary hearing. The court now concludes and recommends
19 that the Motion to Suppress (#11) should be granted based on the following:

20 **BACKGROUND**

21 Early on the morning on January 2, 2011, Officer Arthur Hawkins of the Las Vegas
22 Metropolitan Police Department (LVMPD) was on patrol near the corner of Carson Avenue and
23 14th Street, an area he identified as a high crime area. While traveling south on 14th Street, he
24 observed a tan Chevrolet Monte Carlo, which was stopped on Carson Avenue, pull into the
25 westbound lane without signaling. Officer Hawkins turned onto Carson Avenue and followed
26 the vehicle until he lost the vehicle at a stop light. A few minutes later, Officer Hawkins circled
27 back around and observed the vehicle parked in the same or similar location.
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1 The decision to conduct an investigatory stop of an automobile does not violate this right where
2 the police have reasonable suspicion to support the stop. *United States v. Choudhury*, 461 F.3d
3 1097, 1100 (9th Cir. 2006). In determining whether an officer had reasonable suspicion to
4 conduct a traffic stop, the court must look at the totality of the circumstances to see whether the
5 detaining officer has a particularized and objective basis for suspecting unlawful conduct.
6 *United States v. Arvizu*, 534 U.S. 266, 273 (2002).

7 Here, Officer Hawkins stopped Carranza because he observed Carranza enter the highway
8 without signaling. Officer Hawkins lost sight of the vehicle for a few minutes then observed the
9 vehicle once more parked in nearly the exact same location that he had initially observed.
10 Carranza argues that the stop was improper because his failure to signal did not constitute a
11 violation of Nevada traffic laws and because Officer Hawkins lost sight of the vehicle before
12 making his stop. Therefore, Carranza argues, there was no reasonable suspicion for the officer to
13 conduct an investigatory traffic stop.

14 A. Failing to Give an Appropriate Signal

15 In attempting to show that Officer Hawkins had a reasonable suspicion of unlawful
16 conduct, the Government relies on Nevada Revised Statutes (NRS) 484B.223(1)(b), which
17 provides that “[i]f a highway has two or more clearly marked lanes for traffic traveling in one
18 direction, vehicles must: (a) [b]e driven as nearly as practicable within a single lane; and (b) [n]ot
19 be moved from that lane until the driver has given the appropriate turn signal and ascertained that
20 such movement can be made with safety.” Government’s Opp’n 3:5-9 (#17) (incorrectly cited as
21 NRS § 484.305(1)(b)). However, this statute does not apply in this case for the simple reason
22 that Carson Avenue does not have two or more lanes “for traffic traveling in one direction.”

23 At the end of the evidentiary hearing the government argued the application of NRS
24 484.343 [actually NRS 484B.413] as a basis for Officer Hawkins’ stop of Carranza. This
25 argument was also included in the government’s Supplemental Brief (#31) at 3-5 after the
26 evidentiary hearing. NRS 484B.413, states that “[a] driver shall not turn a vehicle from a direct
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1 course upon a highway unless and until such movement can be made with reasonable safety, . . .
2 and after giving an appropriate signal if any other vehicle may be affected by such movement.”
3 However, this section also does not apply. Carranza was not operating his vehicle “upon a
4 highway.” An examination of another section of the Nevada Revised Statutes helps to illustrate
5 why.

6 Nevada Revised Statutes 484B.410 states that “[a] person . . . shall not start a vehicle
7 which is stopped, standing or parked on a highway nor enter upon a highway unless and until
8 such movement can be made with safety.” While section 484B.413 seems to contemplate a lane
9 change while the vehicle is already in motion, similar to NRS § 484.223, section 484B.410
10 describes a situation where a vehicle that has stopped on the side of a highway moves to reenter
11 the highway. Section 484B.413 requires that the driver signal before making a lane change, if
12 such movement may affect any other vehicle. NRS Section 484B.410 requires that a driver of a
13 stopped vehicle seeking to enter the highway wait to do so until the movement can be done
14 safely. None of these sections apply to Carranza’s situation.

15 Carranza’s vehicle was stopped on the side of the road when Officer Hawkins first saw it.
16 As Officer Hawkins turned from 14th Street onto Carson Avenue, Carranza moved into the
17 traffic lane and traveled further down Carson Avenue. Carranza’s movement was done without
18 incident and, therefore, seems to have been made “with safety.” NRS § 484B.410. The
19 Government cannot point to any section of the Nevada traffic laws that may have been violated
20 by Carranza’s actions. Therefore, Officer Hawkins did not have reasonable cause to believe a
21 traffic violation had occurred and the resulting traffic stop constitutes a violation of Carranza’s
22 Fourth Amendment rights.

23 B. Terry Stop

24 The government argues in its Supplemental Brief (#31) at 5-6 that in the absence of a
25 traffic violation Officer Hawkins “had reasonable suspicion to conduct an investigatory stop as
26 allowed under Terry v. Ohio. The factual predicate for this argument is (1) “the defendant parked
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1 in a high crime area very early in the morning” and (2) “the defendant’s failure to utilize his
2 signal light when pulling out onto Carson Avenue.”

3 The latter is already eliminated as a basis for the stop and the former, standing alone does
4 not establish a “particularized and objective basis for suspecting. . .criminal activity.” To hold
5 contrary would allow police stops of every vehicle in the neighborhood. That result would be
6 untenable under the Constitution and existing case law.

7 C. Losing Sight of the Vehicle

8 Carranza further argues that Officer Hawkins did not have a reasonable suspicion to
9 conduct a traffic stop because he never had a facial identification of the driver when he lost sight
10 of the car for a few minutes. Carranza states that Officer Hawkins did not have a reasonable
11 suspicion to believe that he was the same driver who committed the alleged traffic infraction. As
12 the court has determined that Carranza’s actions did not violate any Nevada traffic laws and,
13 therefore, that there was no reasonable cause for the traffic stop, there is no need to address
14 Carranza’s argument concerning Officer Hawkins losing sight of the vehicle.

15 RECOMMENDATION

16 Based on the foregoing and good cause appearing therefore,
17 IT IS THE RECOMMENDATION of the Defendant’s Motion to Suppress for Fourth
18 Amendment Violation (#11) be **GRANTED**.

19 **NOTICE**

20 Pursuant to Local Rule IB 3-2 any objection to this Report and Recommendation
21 must be in writing and filed with the Clerk of the Court within 14 days of service of this
22 document. The Supreme Court has held that the courts of appeal may determine that an appeal
23 has been waived due to the failure to file objections within the specified time. *Thomas v. Arn*,
24 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file objections within the
25 specified time and (2) failure to properly address and brief the objectionable issues waives the
26 right to appeal the District Court’s order and/or appeal factual issues from the order of the

1 District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United*
2 *Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

3 DATED this 28th day of October, 2011.

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8 ROBERT J. JOHNSTON
United States Magistrate Judge
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